

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 499 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GH CHAKRAVERTY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 499 of 1999
MR IS SUPEHIA for Petitioner No. 1
MR N.D.GOHIL, AGP for Respondent No. 1
RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 10/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. I.S.Supehia for the petitioner and learned AGP Mr. N.D.Gohil appearing on behalf of the respondent.

2. Learned advocate Mr. I.S.Supehia appearing on behalf of the petitioner has submitted that the present petitioner is already retired from service on 30.4.1998 and, in the present petition the punishment order passed

by the respondent dated 15.12.1998 is challenged wherein from the pension of the petitioner Rs.100 cut with permanent effect has been ordered by the respondent being a punishment to the petitioner, meaning thereby that from pension which has been received by the petitioner in each month Rs.100 cut remained continued till the petitioner is entitled to receive the pension according to the pension rules. Learned advocate Mr. Supehia has raised contention that in response to the show-cause notice with finding of the inquiry officer dated 7.11.1998 was received by the petitioner and the petitioner had submitted detailed reply on 12.9.1998. The said reply was not considered by the respondent authority while imposing the punishment against the petitioner. He submitted that the respondent authority has neither accepted the reply nor any reasons have been given as to why the reply given by the petitioner is not accepted. There is even no discussion in the order which amounts to non-application of mind and, therefore, according to him, on that ground alone the punishment order is required to be set aside.

3. The affidavit-in-reply has been filed by the respondent. In respect to the date of charge sheet, inquiry and the opportunity which has been given to the petitioner, necessary averments have been made in the reply, but, while not accepting the reply from the petitioner, no averments or reasons have been made in the reply. A bare perusal of the order itself suggest that no reasons have been given by the respondent authority while not accepting the reply from the petitioner and the punishment order has been passed against the petitioner.

4. I have considered the submissions made by both the learned advocates and also perused the averments made in the petition as well as relevant documents annexed to the petition and also reply filed by the respondent.

5. After considering and perusing the entire record, the only question remained to be examined by this Court is as to whether the reply filed by the petitioner has been considered by the respondent authority before passing the punishment order or not. No doubt, it is made clear in the order itself that reply dated 12.9.1998 was received by the respondent authority and it is made clear in the order that reply of the petitioner is not accepted by the respondent authority. The said averment is made on page 139, internal page 3 of the punishment order. No reasons have been given by the respondent authority in respect to not accepting the reply of the petitioner and, why the reply of the petitioner is not

accepted, for that also no discussion in the order. It is a duty of the respondent authority to apply its mind while calling the explanation from the petitioner and while supplying the report of the inquiry officer and consider the same with application of mind. Merely 'considering' and saying, 'it is not accepted' is not enough, they should have to give reason in support of the conclusion of not accepting the reply submitted by the petitioner. In absence of the same, the order suffers from non-application of mind. It is also necessary to note that in absence of the reason as to on what basis the authority has rejected the reply submitted by the petitioner, it is also not even known to the Court. Therefore, in such circumstances, it is very difficult to challenge the order of punishment in absence of the reasons passed by the respondent authority.

6. The aforesaid aspect has been examined by the Apex Court in the case of ANIL KUMAR V. PRESIDING OFFICER AND OTHERS, AIR 1985 SC 1121. The Apex Court, while considering the finding of the inquiry officer has held that it is a duty of the Enquiry Officer to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons.

7. I have considered the observations made by the Apex Court in respect to the inquiry report. The same applies to the facts of the present case. When the show-cause notice has been served with the report of the inquiry officer to the petitioner calling the explanation from the petitioner as to why the punishment proposed in the show-cause notice should not be imposed, against which a detailed reply has been filed by the employee/present petitioner on 12.9.1998. That reply was received by the respondent authority but same has not been discussed or no reasons have been given as to why the said reply is not accepted by the respondent authority and on what ground it has been rejected by the respondent authority. Therefore, that itself is contrary

to the principle of natural justice. In view of this fact, on limited ground the order suffers from non-application of mind and contrary to the principle of natural justice as it being an unreasoned order. Therefore, this order is required to be set aside.

8. In result, the present petition is allowed. The order passed by the respondent dated 15.12.1998 (Annexure-J, page 137) is hereby quashed and set aside. It is directed to the respondent to pay whatever amount of pension which has been deducted because of the punishment order dated 15.12.1998, back to the petitioner within a period of three months from the date of receiving the copy of this order. Rule is made absolute accordingly. No order as to costs.

8. It is, however, made clear that this order has been passed by this Court on limited ground that before passing the punishment order, the reply of the petitioner has not been considered by the respondent authority. This Court has not examined the merits of the matter.

(H.K.Rathod, J)

Jayanti*